

KENTUCKY PERSONNEL BOARD
MINUTES OF OCTOBER 12, 2012

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Doug Sapp on October 12, 2012, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

Wayne "Doug" Sapp, Chairman
Larry B. Gillis, Vice Chairman
David B. Stevens, Member
David F. Hutcheson, Jr., Member
Donald W. "Don" Blevins, Member
Ramona Herndon-Griffin, Member
Mark A. Sipek, Executive Director and Secretary
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

Board Personnel Absent:

Tommy W. Chandler, Member
Boyce A. Crocker, General Counsel

2. **READING OF THE MINUTES OF REGULAR MEETING HELD SEPTEMBER 14, 2012**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Sapp asked for additions or corrections. Mr. Blevins moved to approve the minutes, as submitted. Dr. Stevens seconded, and the motion carried 6-0. The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek advised that Mr. Crocker, Ms. Herndon-Griffin, Mr. Gillis (President of IPMA), Ms. Perkins and himself attended the IPMA conference to discuss Board appeals with Human Resources' professionals.

At the conclusion of Mr. Sipek's report, Chairman Sapp called for the Personnel Cabinet's report.

4. PERSONNEL CABINET'S REPORT

The Hon. Dinah Bevington came forward to present the Personnel Cabinet's report.

Ms. Bevington advised that regulation amendments will be presented at the December Board meeting. Specifically, regulations on leave and on probationary periods.

Ms. Bevington discussed the Governor's "Smart Government Initiative" to consolidate Information Technology (IT). The Personnel Cabinet has been reviewing position descriptions, class specifications, and evaluations of approximately 800 employees. This consolidation will cut costs and provide a more efficient operation of services (i.e. no duplication of services or products).

Ms. Bevington stated that employees will be temporarily detailed to the Commonwealth's Office of Technology. This will not involve physically moving employees at this time, but is a reporting structure. The Personnel Cabinet is assisting the Finance Cabinet, which initiated the consolidation of IT. Personnel is doing all they can to inform the employees and to make sure this is handled correctly. In response to Dr. Stevens' question concerning whether there will be a reduction in the workforce, Ms. Bevington added that no merit employees will be laid-off as a result of this consolidation. However, there may be a reduction in contractors.

Mr. Gillis asked Ms. Bevington to inform Mr. Joe Cowles that there is a problem with getting "free" flu shots; as some providers are charging employees fees or co-pays.

Mr. Blevins asked about the information he requested concerning how Kentucky compares as an employer with other industries and state governments. Ms. Bevington stated it was a "work in progress," but will check on the status of his request.

5. ORAL ARGUMENTS

A. Monique Anthony v. Justice and Public Safety Cabinet (Corrections)

Present for oral argument were the Appellant, Monique Anthony, and counsel for Appellee, the Hon. Amber Arnett. After presenting oral arguments, the parties answered questions from the Board.

B. Daymon Duvall v. Justice and Public Safety Cabinet (Corrections) **--Moved from September**

Present for oral argument were the Appellant, Daymon Duvall, and counsel for Appellee, the Hon. Wesley Duke. After presenting oral arguments, the parties answered questions from the Board.

C. ~~Michelle Crowe v. Justice and Public Safety Cabinet (Juvenile Justice)~~ **--Moved to November**

D. John Grevious v. Justice and Public Safety Cabinet (Corrections)

Present for oral argument were the Appellant, John Grevious; counsel for the Appellant, Carrie Kalbfleisch; and counsel for Appellee, the Hon. Amber Arnett. After presenting oral arguments, the parties answered questions from the Board.

E. Warren McElmore v. Justice and Public Safety Cabinet (Corrections)

Present for oral argument were the Appellant, Warren McElmore, and counsel for Appellee, the Hon. Angela Cordery. After presenting oral arguments, the parties answered questions from the Board.

Mr. Blevins, having noted Appellant's response to the show cause order and oral arguments, moved to return this matter to the active docket to allow an evidentiary hearing. Dr. Stevens seconded and the motion carried 6-0.

6. MOTIONS

A. Michael O'Brien v. Justice and Public Safety Cabinet (Juvenile Justice) -- Appellee's Motion to File Late Exceptions

Mr. Sipek stated that a recommended order was issued by Hearing Officer Crocker. The Appellee filed exceptions; however, the Board returned them as untimely. The Appellee responded with a Response to Executive Director's Refusal to Allow Board to Consider Appellee's Exceptions. Mr. Sipek then issued a letter informing the parties that the document would be considered as a motion to allow the filing of late exceptions and would be placed on the Board's October agenda.

Mr. Sipek advised that Mr. Adkins, counsel for Appellee, had a personal matter and could not be at the meeting; however, the Appellant, Mr. Michael O'Brien, was present. Chairman Sapp invited Mr. O'Brien to come forward. Mr. O'Brien stated that he has not been receiving all the documents. Mr. Sipek stated that the Appellee mailed its exceptions to a Michael O'Brien in Lexington, which is not the Appellant's address.

Mr. Sipek advised that it is a statutory requirement to file exceptions within fifteen days. Mr. Sipek stated that the Appellee relied on Kentucky Civil Rule CR 6.05, which allows three additional days, if mailed. However, in the case of *Commonwealth v. Copper Care, Inc.*, the Court of Appeals issued an opinion stating that the three-day mail rule did not apply, except when calculating holidays and weekends. Mr. Sipek stated that the filing of late exceptions was routinely denied by the Board.

Mr. Hutcheson moved to deny Appellee's Motion to File Late Exceptions. Mr. Gillis seconded and the motion carried 6-0.

B. Michelle Crowe v. Justice and Public Safety Cabinet (Juvenile Justice) - (3 appeals) -- Appellant's Motion to file Memorandum in Support of Exceptions --Appellee's Response

Mr. Sipek stated that the parties are not present; but would rely on the documents filed with the Board. Mr. Sipek stated that the exceptions were filed timely by the Appellant; however, the Appellant filed a motion to supplement the record after the fifteen-day period. The Appellee objected to the Appellant's motion.

Mr. Blevins moved to deny Appellant's Motion to File Memorandum in Support of Exceptions. Mr. Hutcheson seconded and the motion carried 6-0.

7. INVESTIGATIONS

A. Department of Agriculture – request by Steve Alvey

--Additional Information provided by Alvey

Present were Mr. Alvey and the Hon. Nicole Liberto, Department of Agriculture.

Mr. Sipek provided a brief background, stating that Mr. Alvey was dismissed from the Department of Agriculture in 2005 and thereafter filed an appeal with the Personnel Board. The appeal was dismissed by the Board in 2006, and Mr. Alvey appealed to the courts. However, both the Franklin Circuit Court and the Court of Appeals upheld the dismissal of Mr. Alvey. Kentucky Supreme Court denied Mr. Alvey's request for Discretionary Review

Recently, Mr. Alvey filed a new appeal (2012-162) with the Personnel Board alleging that his termination in 2005 was unfair because of later revealed personnel problems while Mr. Farmer was the Commissioner of Agriculture. A pre-hearing was held by Hearing Officer Crocker. At the pre-hearing, the Appellee suggested that this matter be included in the Personnel Board's investigation of the Department of Agriculture. Hearing Officer Crocker, by Interim Order, submitted the matter to the Board's Executive Director and the Personnel Board.

Chairman Sapp asked the parties whether they agreed to this matter being included in the Board's investigation. Both parties agreed.

Mr. Gillis stated that Mr. Alvey had an evidentiary hearing and the Hearing Officer recommended the appeal be dismissed, and that the decision was also upheld by the courts. Mr. Hutcheson agreed that this matter has already been litigated. Mr. Alvey stated that he wanted the opportunity to be heard, that his "life was at stake" and he had eighteen years with the state, without problems. Mr. Blevins stated that, in his opinion, he saw no avenue of relief for Mr. Alvey. Mr. Hutcheson stated that, in his opinion, the investigation was focused on the State Auditor's Report. Dr. Stevens asked Mr. Alvey if there was something that would be uncovered in the investigation, besides the lack of progressive discipline. Mr. Alvey stated there are facts that have been uncovered at the Department of Agriculture that were not known during his initial appeal. He also stated that he was demoted prior to his dismissal. Mr. Sipek disagreed

with Mr. Alvey's statement and advised that Mr. Alvey had been "reverted" [which is not a disciplinary action], not "demoted."

Mr. Hutcheson moved to deny Mr. Alvey's request to be included in the investigation of the Department of Agriculture. Mr. Gillis seconded and the motion carried 4-1, with Dr. Stevens opposing and Chairman Sapp abstaining.

Mr. Sipek advised Mr. Alvey that his newest appeal is still pending and will be scheduled for another pre-hearing conference.

B. Department of Agriculture – request by Thaddeus Price
--Response by Department of Agriculture

Present was Ms. Nicole Liberto, Department of Agriculture. The Hon. Henry J. Curtis did not appear before the Board.

Mr. Sipek stated this was a similar situation to Mr. Alvey's. Mr. Price was dismissed in August 2009 and he filed a timely appeal with the Personnel Board in September 2009, which was dismissed. Mr. Price did not appeal to the courts. The Hon. Henry J. Curtis requested that the Board review Mr. Price's dismissal and that Mr. Price be reinstated to a position with the Department of Agriculture.

Mr. Blevins asked if there was a statute of limitation on prior appeals. Mr. Sipek stated that there is no specific statute on the Board's investigative powers.

Mr. Hutcheson moved to deny Mr. Price's request to be included in the investigation of the Department of Agriculture. Mr. Blevins seconded and the motion carried 5-1, with Dr. Stevens opposing.

8. CLOSED SESSION

Mr. Gillis moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Ms. Herndon-Griffin seconded. Chairman Sapp stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session.

Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 6-0. (12:40 p.m.)

Mr. Blevins moved to return to open session. Mr. Hutcheson seconded and the motion carried 6-0. (1:19 p.m.)

9. CASES TO BE DECIDED

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. Monique Anthony v. Justice and Public Safety Cabinet (Corrections)

Mr. Blevins moved to note Appellee's exceptions, Appellant's response, and oral arguments and to accept the recommended order sustaining the appeal to the extent of demotion to Sergeant. Dr. Stevens seconded and the motion carried 4-2, with Mr. Hutcheson and Mr. Gillis opposing.

B. Daymon Duvall v. Justice and Public Safety Cabinet (Corrections)

Dr. Stevens moved to note Appellant's exceptions and oral argument and to defer this matter to the next Board meeting. Mr. Hutcheson seconded and the motion carried 6-0.

C. ~~Michelle Crowe v. Justice and Public Safety Cabinet (Juvenile Justice)~~ **Moved to November**

D. John Grevious v. Justice and Public Safety Cabinet (Corrections)

Mr. Hutcheson moved to note Appellee's exceptions, Appellant's response and oral argument and to defer this matter to the next Board meeting. Mr. Blevins seconded and the motion carried 6-0.

E. Warren McElmore v. Justice and Public Safety Cabinet (Corrections) The Board decided after Oral Arguments above.

F. Robert Dickow v. Tourism, Arts and Heritage Cabinet (Parks)
Deferred from September

Mr. Hutcheson moved to note Appellee's exceptions (oral argument request untimely), Appellant's response and to accept the Final Order Altering the recommended order and sustaining the appeal, as attached to the minutes. Ms. Ramona Herndon-Griffin seconded and the motion carried 6-0.

G. Frank Derr v. Justice and Public Safety Cabinet (Juvenile Justice) –
(2 appeals)

Mr. Gillis moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 6-0.

H. Harry Loudon v. Justice and Public Safety Cabinet (Corrections) and
Personnel Cabinet

Mr. Gillis moved to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 6-0.

I. Michael O'Brien v. Justice and Public Safety Cabinet (Juvenile Justice)

Mr. Hutcheson moved to note Appellee's Exceptions and Request for Oral Argument (returned as untimely) and to accept the recommended order sustaining to the extent of leave balance being returned and back pay. Dr. Stevens seconded and the motion carried 6-0.

J. Jerome Penick v. Transportation Cabinet and Erbie Tim McNutt

Mr. Gillis moved to accept the recommended order dismissing the appeal. Ms. Herndon-Griffin seconded and the motion carried 6-0.

K. John Rankin v. Tourism, Arts, and Heritage Cabinet (State Fair Board) and
Personnel Cabinet

Dr. Stevens moved to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 6-0.

Show Cause Orders – No Response Filed – Appeals Dismissed

The following cases had a show cause order entered by the hearing officer recommending that the appeals be dismissed for failure to timely prosecute unless a statement was filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There was no response submitted by the Appellants to the show cause orders.

- L. Mark Brown v. Justice and Public Safety Cabinet (Corrections)
- M. Matthew King v. Education and Workforce Development Cabinet and Personnel Cabinet
- N. Lisa Papineau v. Cabinet for Health and Family Services

Mr. Blevins moved to find that the Appellants had not responded to the show cause order and that the recommended orders be accepted *en bloc* dismissing the appeals for failure to timely prosecute the appeals. Ms. Herndon-Griffin seconded and the motion carried 6-0.

10. WITHDRAWALS

Dr. Stevens moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Mr. Hutcheson seconded and the motion carried 6-0.

- A. Sue Alexander v. Cabinet for Health and Family Services
- B. Stuart Fanning v. Tourism, Arts and Heritage Cabinet (F&W) (2 appeals)
- C. Jenny Howard v. Cabinet for Health and Family Services (2 appeals)
- D. Mary Elaine Jett v. Education and Workforce Development Cabinet
- E. Kenneth Joyce v. Energy and Environment Cabinet
- F. Samantha O'Daniel v. Justice and Public Safety Cabinet (DPA) and Personnel Cabinet
- G. David K. Stidham v. Justice and Public Safety Cabinet (Corrections)
- H. Thomas Waters v. Justice and Public Safety Cabinet (Corrections) – (2 appeals)

11. SETTLEMENTS

Dr. Stevens moved to accept the following settlements *en bloc*, as submitted by the parties, and to sustain the appeals to the extent set forth in the settlement. Ms. Herndon-Griffin seconded and the motion carried 6-0.

- A. Cleta G. Haywood v. Finance and Administration Cabinet
- B. Thomas Clay v. Tourism, Arts and Heritage Cabinet (Parks)
- C. Dawn Cockerel v. Cabinet for Health and Family Services
- D. Sherry Runkle v. Cabinet for Health and Family Services (2 appeals)
(mediated)

12. OTHER

Election of Officers

Dr. Stevens moved to re-elect Mr. Sapp as Chairman and Mr. Gillis as Vice-Chairman. Mr. Hutcheson seconded and the motion carried unanimously.

Chairman Sapp asked if there were any other matters to be discussed. There being no further business, Mr. Blevins moved to adjourn. Ms. Herndon-Griffin seconded and the motion carried 6-0. (1:25 p.m.)

Wayne D. Sapp, Chairman

Larry B. Gillis, Vice Chairman

David B. Stevens, Member

David F. Hutcheson, Jr., Member

Donald W. Blevins, Member

Ramona Herndon-Griffin, Member